

**IN THE UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF OHIO  
WESTERN DIVISION**

Joshua Berkowitz,

Case No. 1:14cv543

Plaintiff,

Judge Michael R. Barrett

-VS-

Brahma Investment Group, Inc., *et al.*,

Defendants.

**OPINION & ORDER**

This matter is before the Court on the Motion to Dismiss *In Rem* Claims, or in the Alternative, to Compel the Defendants to Show Cause filed by Plaintiff/Relator, Joshua Berkowitz, and Intervenor, Unlimited Hotels, Inc. (“Unlimited”). (Doc. 100). Respondent-Counterclaimant, Brahma Investment Group, Inc. (“Brahma”) filed a Response in Opposition. (Doc. 102).

Relator is law director for the City of Norwood, Ohio. This case began on June 2, 2014 in the Hamilton County Court of Common Pleas. Relator filed a petition against Brahma for alleged violations of state law in their management and operation of their property at 4747 Montgomery Road, Norwood, Ohio (“the Property”), which was being operated as a Quality Inn hotel (“the Nuisance Action”). Brahma shares ownership in the Property with California Pacific Hospitality, LLC (“CalPac”). Relator claimed that the Property constituted a public nuisance due to the illegal drug activity and prostitution which was occurring on the Property. The court entered an ex parte Temporary

Restraining Order on June 2, 2014 and closed the Property. Thereafter, the Nuisance Action was removed to this Court. Brahma and CalPac filed an Answer to Verified Petition, Counterclaims and Third Party Complaints. (Doc. 74). Brahma and CalPac's counterclaims are (1) discrimination in violation of 42 U.S.C. §§ 1981 and 1985; (2) violation of 42 U.S.C. § 1983; (3) violation of due process based on the failure to name CalPac in the Nuisance Action; (4) and conversion.

In their joint Motion to Dismiss, Relator and Unlimited move the Court to dismiss the nuisance, injunctive relief and all other *in rem* claims pled in this case, because the relief Relator originally sought has become moot. Relator and Unlimited explain that the Property has now been transferred by a receiver's sale in Hamilton County Common Pleas Court, which closed on December 9, 2015. (See Doc. 72-1).

In response, Brahma agrees that the state-law nuisance claim and demand for injunctive relief are moot, and does not oppose the Court's dismissal of the Nuisance Action on that basis. However, Brahma does not agree that its counterclaims or the counterclaims of CalPac are moot.

Relator and Unlimited's Motion to Dismiss is governed by Federal Rule of Civil Procedure 41(A)(2)(a), which provides: "If a counterclaim has been pleaded by a defendant prior to the service upon that defendant of the plaintiff's motion to dismiss, a claim shall not be dismissed against the defendant's objection unless the counterclaim can remain pending for independent adjudication by the court."

Based on the foregoing, it is hereby **ORDERED** that Plaintiff/Relator Berkowitz and Intervenor, Unlimited Hotels, Inc.'s Motion to Dismiss In Rem Claims, or in the Alternative, to Compel the Defendants to Show Cause (Doc. 100) is **GRANTED**. Relator's claims brought in the Nuisance Action are **DISMISSED with PREJUDICE**. Plaintiff/Relator Berkowitz and Intervenor Unlimited Hotels, Inc. are terminated as parties from this matter.

**IT IS SO ORDERED.**

/s/ Michael R. Barrett  
Michael R. Barrett, Judge  
United States District Court